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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 Oluyemisi Bosfield,

11 Plaintiff,

12 v.

13 Lincoln National Life Insurance Company,
14 360 Communities, Inc., Group Long Term
Disability Insurance for Employees of 360
15 Communities, Inc.,

16 Defendants.
17

Case No.

COMPLAINT

18 Now comes the Plaintiff, Oluyemisi Bosfield (hereinafter referred to as “Plaintiff”),
19 by and through her attorney, Scott E. Davis, and complaining against the Defendants, she
20 states:

21 ***Jurisdiction***

22 1. Jurisdiction of the court is based upon the Employee Retirement Income
23 Security Act of 1974 (ERISA); and in particular, 29 U.S.C. §§1132(e)(1) and 1132(f).
24 Those provisions give the district courts jurisdiction to hear civil actions brought to recover
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1 employee benefits. In addition, this action may be brought before this Court pursuant to 28
2 U.S.C. §1331, which gives the Court jurisdiction over actions that arise under the laws of
3 the United States.

4 *Parties*

5 2. Plaintiff is a resident of Maricopa County, Arizona.

6 3. Upon information and belief, 360 Communities, Inc. (hereinafter referred to
7 as the “Company”) sponsored, administered and purchased a group disability insurance
8 policy which was fully insured by Jefferson Pilot Financial Insurance Company (hereinafter
9 referred to as “Jefferson”) and was purchased or assumed by Lincoln National Life
10 Insurance Company (hereinafter referred to as “Lincoln”). The specific Jefferson group
11 policy is known as 000010047770. The Company’s purpose in sponsoring, administering
12 and purchasing the Jefferson policy was to provide disability insurance for its employees.
13 Upon information and belief, the Jefferson policy may have been included in and part of
14 an employee benefit plan, specifically named the Group Long Term Disability Insurance
15 for Employees of 360 Communities, Inc. (hereinafter referred to as the “Plan”) which
16 may have been created to provide the Company’s employees with welfare benefits. At
17 all times relevant hereto, the Plan constituted an “employee welfare benefit plan” as
18 defined by 29 U.S.C. §1002(1).

19 4. Upon information and belief, Lincoln merged with Jefferson on or around
20 July 2, 2007. During the processing of Plaintiff’s claim and appeals, Lincoln sometimes
21 corresponded with Plaintiff through letterhead in the name of Jefferson. Plaintiff will
22 refer to all correspondence herein as coming from Lincoln, including all correspondence
23 on Jefferson letterhead.

24 5. Upon information and belief, Lincoln functioned as the claims administrator
25 of the policy; however, pursuant to the relevant ERISA regulation, the Company and/or the
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1 Plan may not have made a proper delegation or properly vested fiduciary authority or power
2 for claim administration in Lincoln.

3 6. Upon information and belief, Plaintiff believes Defendants operated under a
4 conflict of interest in evaluating her claim due to the fact they may have operated in dual
5 roles as the decision maker with regard to whether Plaintiff was disabled as well as the
6 payor of benefits; *to wit*, Defendants' conflict existed in that if Plaintiff was disabled one of
7 them was liable for payment of those benefits.

8 7. The Company, Lincoln and the Plan conduct business within Maricopa
9 County and all events giving rise to this Complaint occurred within Maricopa County.

10 ***Venue***

11 8. Venue is proper in this district pursuant to 29 U.S.C. §1132(e)(2) and 28
12 U.S.C. §1391.

13 ***Nature of the Complaint***

14 9. Incident to her employment, Plaintiff was a covered employee pursuant to
15 the Plan and the relevant policy and a “participant” as defined by 29 U.S.C. §1002(7).
16 Plaintiff seeks disability income benefits from the Plan and the relevant policy pursuant to
17 §502(a)(1)(B) of ERISA, 29 U.S.C. §1132(a)(1)(B) as well as any other employee benefits
18 from any Defendant that she may be entitled to as a result of being found disabled.

19 10. On or about June 10, 2006, Plaintiff became disabled due to serious medical
20 conditions and was unable to work in her designated occupation as a Family Support
21 Worker. Plaintiff has remained disabled as that term is defined in the relevant policy
22 continuously since that date and has not been able to return to any occupation due to her
23 serious medical conditions.

24 11. Upon information and belief, the relevant Lincoln policy and definition of
25 disability governing Plaintiff’s long term disability claims is as follows:
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1 “Total Disability” or “Totally Disabled” will be defined as follows:

2 1. During the Elimination Period and Own Occupation Period, it means that
3 due to an Injury or Sickness the Insured Employee is unable to perform each
4 of the main duties of his or her regular occupation.

5 2. After the Own Occupation Period, it means that due to an Injury or
6 Sickness the Insured Employee is unable to perform each of the main duties
7 of any Gainful Occupation.

8 12. In a letter dated September 25, 2006, Lincoln informed Plaintiff after a review
9 of her claim file, that it determined she did not meet the definition of disability set forth in
10 its Policy and that it had denied benefits.

11 13. On February 16, 2007, pursuant to 29 U.S.C. §1133, Plaintiff timely appealed
12 the September 25, 2006 denial of her claim and submitted additional medical evidence
13 supporting her entitlement of benefits to Lincoln.

14 14. Plaintiff submitted to Lincoln updated medical records, Attending Physician’s
15 Statements and Certification of Disability Statements from her treating physicians who
16 concluded she was unable to return to work in any occupation.

17 15. Plaintiff underwent an evaluation on January 12, 2007 and January 22, 2007
18 with a medical professional who concluded, after extensive medical testing that she was
19 unable to return to work due to her restrictions and limitations. Plaintiff submitted a
20 complete copy of the medical professional’s report to Lincoln.

21 16. By letter dated May 4, 2007, Lincoln notified Plaintiff it was upholding its
22 decision to deny her long term disability benefits, after erroneously concluding that
23 Plaintiff’s medical records, completed physicians’ questionnaires and evaluations did not
24 support restrictions and limitations that would render her unable to perform the main duties
25 of gainful employment.

26 17. Defendant failed to fully consider the evidence Plaintiff submitted on appeal
and unreasonably rejected Plaintiff’s medical evidence as referenced in paragraph 15.

1 18. Plaintiff did not appeal Lincoln's May 4, 2007 denial of her claim because
2 she believed it would have been administratively futile due to Lincoln's prior one sided,
3 flawed and biased reviews of her claim.

4 19. Subsequent to Lincoln's denial of her claim, Plaintiff filed for Social Security
5 Disability benefits with the Social Security Administration. On or around October 30, 2010
6 and prior to an Administrative Law Judge Hearing, Plaintiff was found disabled by the
7 Social Security Administration for the same medical conditions that she sought disability
8 benefits for from Lincoln.

9 20. In its May 4, 2007 denial letter, Lincoln denied Plaintiff of a lawful, full and
10 fair review pursuant to ERISA for various reasons including but not limited to, failing to
11 consider or de-emphasizing all evidence submitted by Plaintiff, failing to consider or de-
12 emphasizing all the limitations set forth in the medical evidence, failing to consider or de-
13 emphasizing the side effects Plaintiff experienced from her medications and failing to
14 consider or de-emphasizing the opinions of her treating medical professionals that Plaintiff
15 was unable to work in any occupation and is totally disabled. Lincoln's failure to consider
16 the above information in determining Plaintiff's ability to perform her occupation denied
17 her of a full and fair review and led to a flawed determination that she was not disabled.

18 21. Lincoln further denied Plaintiff a full and fair review pursuant to ERISA
19 because it did not request an independent medical examination of Plaintiff or seek a
20 review by an impartial vocational expert to assess the impact her physicians' limitations
21 would have in any work environment. The relevant policy allowed an independent
22 medical examination and vocational evaluation with a professional of its own choosing.
23 Lincoln's failure to obtain these evaluations violated its fiduciary duty to Plaintiff and also
24 precluded a full and fair review due to its failure to properly investigate her claim in
25 violation of ERISA, specifically 29 C.F.R. § 2560.503-1(h).
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1 22. In evaluating Plaintiff's claim on appeal, Lincoln had an obligation pursuant
2 to ERISA to administer Plaintiff's claim "solely in her best interests and other participants"
3 which it failed to do.¹

4 23. Plaintiff believes the reason Lincoln provided an unlawful review which was
5 neither full or fair and that violated ERISA, specifically, 29 U.S.C. § 2560.503-1, is due to
6 the aforementioned dual roles it undertook as decision maker and payor of benefits in her
7 claim which created an inherent conflict of interest and this conflict is a reason her
8 disability claim was denied. Specifically, Lincoln saved a significant sum of money
9 when it terminated Plaintiff's benefits and her claim.

10 24. Plaintiff is entitled to discovery regarding the aforementioned conflicts of
11 interest of Lincoln and any individual who reviewed her claim and the Court may properly
12 weigh and consider evidence regarding the nature, extent and effect of *any* conflict of
13 interest which may have impacted or influenced Lincoln's decision to deny her claim.

14 25. In a letter dated March 26, 2009 Lincoln informed Plaintiff her administrative
15 record was now closed. Plaintiff believes Lincoln's March 26, 2009 letter communicated a
16 final administrative review of her claim.

17 26. Plaintiff seeks benefits pursuant to the "own" and "any" occupation
18 definitions of disability set forth in the policy.
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21 ¹ "It sets forth a special standard of care upon a plan administrator, namely, that the
22 administrator "discharge [its] duties" in respect to discretionary claims processing "solely
23 in the interests of the participants and beneficiaries" of the plan, § 1104(a)(1); it
24 simultaneously underscores the particular importance of accurate claims processing by
25 insisting that administrators "provide a 'full and fair review' of claim denials," Firestone,
26 489 U.S., at 113, 109 S. Ct. 948, 103 L. Ed. 2d 80 (quoting § 1133(2)); and it
supplements marketplace and regulatory controls with judicial review of individual claim
denials, see § 1132(a)(1)(B). *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2350 (U.S.
2008).

1 27. With regard to whether Plaintiff meets the definition of disability set forth in
2 the policy, the Court should review the evidence in Plaintiff's claim *de novo* because the
3 Company or Plan may not have made a proper delegation or properly vested fiduciary
4 authority or power for plan and/or claim administration in Lincoln pursuant to ERISA.

5 28. As a direct result of Lincoln's decision to deny Plaintiff's disability claim, she
6 has been injured and suffered damages in the form of lost disability benefits in addition to
7 other potential employee benefits she may have been entitled to receive through or from the
8 Plan and/or Company as a result of being found disabled.

9 29. Pursuant to 29 U.S.C. §1132, Plaintiff is entitled to recover unpaid benefits,
10 prejudgment interest, reasonable attorney's fees and costs from Defendants.

11 30. Plaintiff is entitled to prejudgment interest at the rate of 10% per annum
12 pursuant to A.R.S. §20-462, or at such other rate as is appropriate to compensate her for
13 losses she incurred as a result of Defendants' nonpayment of benefits.

14 WHEREFORE, Plaintiff prays for judgment as follows:

15 A. For an Order requiring Defendants to pay Plaintiff disability benefits as a
16 result of being found disabled pursuant to the relevant policy from the date she was first
17 denied these benefits through the date of judgment and prejudgment interest on those
18 benefits as well as any other employee benefits she may be entitled to from the Plan
19 and/or Company as a result of being found disabled;

20 B. For an Order that Plaintiff meets the relevant policy's definition of disability
21 for "own" and "any" occupation benefits;

22 C. For an Order directing Defendants to continue paying Plaintiff benefits until
23 such time as she meets the Plan or policy conditions for termination of benefits;

24 D. For attorney's fees and costs incurred as a result of prosecuting this suit
25 pursuant to 29 U.S.C. §1132(g); and
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1 E. For such other and further relief as the Court deems just and proper.

2 DATED this 5th day of May, 2011.

3 SCOTT E. DAVIS. P.C.

4 By: /s/ Scott E. Davis
5 Scott E. Davis
6 Attorney for Plaintiff
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